

Criminal Appeal No.667-SB of 1998.

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

...

Criminal Appeal No.667-SB of 1998.

Date of Decision: January 27, 2010.

Rajbir Singh

...Appellant

VERSUS

State of Haryana

...Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. Amit Aggarwal, Advocate,
for Mr. Raghujeet Madan, Advocate,
for the appellant.

Ms. Sushma Chopra, Additional Advocate General,
Haryana.

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MOHINDER PAL, J.

Rajbir Singh (appellant) was tried by the Additional Sessions Judge, Hisar, for the offences under Sections 363, 366-A and 376 of the Indian Penal Code (for short 'the Code') whereas

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his co-accused Ramesh Kumar (non-appellant) was tried for the offences under Sections 363, 366-A and 506 of the Code. The appellant and Ramesh Kumar (non-appellant) were convicted and sentenced under Section 363 of the Code vide judgment of conviction and the sentence order dated 24.7.1998 passed by the Additional Sessions Judge, Hisar. The appellant was sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.200/-, in default whereof to undergo further simple imprisonment for three months whereas Ramesh Kumar (non-appellant) was awarded the rigorous imprisonment for one and a half years and to pay fine of Rs.200/-, in default whereof to undergo simple imprisonment for three months for the said offence. In this appeal, appellant Rajbir Singh has impugned the said judgment of conviction and the sentence order.

The facts of the prosecution case are that the prosecutrix (name withheld) had been kidnapped from her house by Ramesh Kumar (co-accused of the appellant) on 30.9.1996 when she was alone and her parents were not at home. The prosecutrix was reluctant to accompany Ramesh Kumar, but he showed her a knife and extended threats to her. The prosecutrix then accompanied Ramesh Kumar, who took her to Bus Stand of Fatehabad where appellant Rajbir Singh met them. Both the accused then threatened the prosecutrix and made her to sit in a bus bound for Narwana. After reaching Narwana, accused Ramesh Kumar alighted from the bus. Thereafter, appellant Rajbir Singh took the prosecutrix to Gohana to his sister, namely, Smt.

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Sheela's house. Appellant Rajbir Singh forcibly committed rape upon the prosecutrix at night during her stay in the house of Smt.Sheela at Gohana. On the next day, they went to the Court premises for marriage, but the police rounded them on 2.10.1996.

After presentation of challan in the Court, the accused were put on trial for the offences as stated above.

During trial, the prosecution examined as many as thirteen witnesses.

In their statements recorded under Section 313 of the Code of Criminal Procedure, accused-appellant Rajbir Singh and Ramesh Kumar (non-appellant) denied the prosecution allegations and pleaded false implication on account of some altercation which took place between them and the father of the prosecutrix pertaining to some payment. However, no evidence was led by the accused in their defence.

I have heard the learned counsel for the parties and have gone through the records of the case.

The prosecutrix, as per school certificate (Exhibit P.E), was born on 25.3.1983 and she had hardly attained the age of thirteen and a half years on the date of commission of the crime, it being 30.9.1996. No doubt, the age mentioned in the School Certificate is not the conclusive proof of age of the prosecutrix, but even after giving the benefit of error of judgment in forming opinion about the age of the prosecutrix, the age of the prosecutrix cannot be said to be more than fifteen

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years. As noticed above, Ramesh Kumar (non-appellant), had approached the prosecutrix when she was alone in her house. She was escorted to Narwana by both the accused. The presence of the prosecutrix in the custody of appellant Rajbir Singh at Gohana cannot be denied because their presence was noticed in the Court premises and the local police at Gohana had sent a wireless message to Fatehabad police. The prosecutrix in her statement as P.W.9 has given the detailed account of the prosecution case including the manner in which she was enticed away from her house and the manner in which she was made to stay at Gohana in the house of the sister of appellant Rajbir Singh. Manjeet Kaur (P.W.10) is the mother of the prosecutrix and Balbir Singh (P.W.11) is the elder brother of the father of the prosecutrix, who were examined with regard to the age of the prosecutrix. N.C. Wadhwa (P.W.3) had brought the original register of admission and withdrawal of students in the Girls Senior Secondary School, Fatehabad and had produced the certificate (Exhibit P.E) showing the Date of Birth of the prosecutrix as 25.3.1983. Sub Inspector Partap Singh (P.W.4), who is Investigating Officer of the case, had recorded the statement of the prosecutrix (Exhibit P.G) when she had been recovered from the custody of appellant Rajbir Singh on 3.10.1996. Mr. A.K. Tyagi (P.W.13), who, at the relevant time, was posted as Sub Divisional Judicial Magistrate, Fatehabad, had recorded the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure on 5.10.1996. As would be discussed

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later on, the prosecutrix was not subjected to rape by appellant Rajbir Singh. Under the circumstances, the evidence furnished by the prosecutrix and the Investigating Officer leaves no room for doubt that the prosecutrix had been kidnapped by the accused from the lawful custody of her parents. The appellant Rajbir Singh has, thus, rightly been convicted and sentenced under Section 363 of the Code.

The offence under Section 376 of the Code did not stand proved against the appellant in this case. In her statement (Exhibit P.G) recorded by the police immediately after her recovery from the custody of appellant Rajbir Singh on 3.10.1996, she did not state about the commission of rape on her by the appellant. She made improvement while making her statement before the Magistrate under Section 164 of the Code of Criminal Procedure wherein she stated that she had been raped by the appellant in his sister's house at Gohana. She had made statement under Section 164 of the Code of Criminal Procedure before the Magistrate on 5.10.1996 i.e after two days of her recovery from the appellant and by that time she must be under the influence of her parents. The possibility of the prosecutrix being tutored by her parents while deposing before the Magistrate, is clearly evident. Dr. (Ms.) Ramesh Chakravarti (P.W.1), who had medico-legally examined the prosecutrix, did not observe any external marks of injuries on any part of the body of the prosecutrix including thighs and perineum. Besides, no semen was detected by the Forensic Science Laboratory on

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the articles sent to it for examination.

For the aforesaid reasons, the prosecution has been able to prove its case against the appellant under Section 363 of the Code beyond all reasonable doubts. I do not see any ground warranting interference in the impugned judgment of conviction and the sentence order rendered by the learned trial Judge. The same are hereby confirmed. Resultantly, this appeal is dismissed.

January 27, 2010.
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**(MOHINDER PAL)
JUDGE**